



Wisconsin State Senate

**John Lehman**

Senator — 21st District

State Capitol • PO Box 7882 • Madison, WI 53707-7882 • (608) 266-1832 • Toll-free: 1-866-615-7510

## **Testimony of State Senator John Lehman**

### **Senate Bill 2**

### **Senate Committee on Labor, Elections and Urban Affairs**

**January 29, 2009**

For most of Wisconsin's history the courts and state law strongly supported workers. In 1998 this changed. A special-interest provision was inserted as part of a budget adjustment bill to remove protections for workers and put bank liens -- regardless of when they were filed -- ahead of any other liens including those for earned, but unpaid compensation for workers.

The Wage Protection Act restores the historic priority of wage lien claims in Wisconsin to help workers collect the full amount of compensation they have earned.

This bill -- Senate Bill 2 -- is based on the simple idea that a day's work should result in a day's pay. Unfortunately our current state law does not have adequate provisions ensuring this principle is observed, and that is why this legislation is necessary.

The loss of a job means workers and their families must deal with the challenge of finding new jobs. They should not have to deal with the hardships of going unpaid for work they have already done or not receiving benefits they have already earned.

Banks and other financial institutions carefully assess loan applicants and charge interest on loans to manage their risk and protect their financial well being. Working families do not have that option.

In recent years some progress has been made in restoring protections for working families. A limited wage lien priority - with a \$3,000 cap -- now exists. At the time, that was the best that could be done. However as a practical matter Wisconsin workers and their families need, and deserve, more.

When one considers that the median full time wage of a working male in Wisconsin is over \$44,000 you begin to realize how quickly a \$3,000 cap is reached. In addition, employees can lose out on other compensation due them like medical insurance premiums, employer contributions to pensions and other retirement accounts held by employers in addition to salaries.

Today we'll hear from some of the people on the front lines of efforts to recover wages on behalf of workers. Their testimony will provide numerous examples of the negative impacts a \$3,000 cap has had on state workers.

Even information based on figures from the Department of Workforce Development distributed by opponents of lifting the cap on recoverable wages shows that average collected and unpaid compensation due to employees in wage lien claims is almost \$3,500.

I have heard criticism of this bill that it will seriously and adversely affect credit availability. We all know that these difficult economic times have created concern over the sufficient access to credit in Wisconsin. However, credit availability in Wisconsin is much more the result of global and national macroeconomic forces. Wisconsin banks are unlikely to be impacted by a state wage lien law revision. I am also reassured by public comments, as recent as Tuesday in the Senate Financial Institutions hearing in Milwaukee, from the Bankers Association that indicate prudent lending decisions have protected our Wisconsin banks from the worst of the credit crisis and they continue to make loans available. And of course, there is the significant infusion of public tax dollars to encourage continued lending by banks.

It is also important to consider that the workers protected by SB 2 are consumers and an important component of any successful economic recovery strategy. If an employee is unable to collect the full amount of the wages they have already earned they will be unable to repay consumer loans for their cars, their homes or their children's education. Certainly we must weigh the negative impacts on the consumer credit market of additional consumer bankruptcies, home foreclosures and delinquent loans.

No one wants to see any Wisconsin company fail. No one wants to see someone lose their job because their employer went out of business or declared bankruptcy, but if that happens we ought to make sure state law is on the employees side in helping them receive the wages they're entitled to. The Wage Protection Act will help to make that happen.

Some have resisted our effort here claiming we would stand out as a state with one of the strongest protections of wage earners. Let me just close by asking ... if we pass this law ... and Wisconsin provides some of the best protections in the nation to ensure that workers get paid the wages they are entitled to ... well what's wrong with that?

The Law Offices Of

**Previant,  
Goldberg,  
Uelmen,  
Gratz,  
Miller &  
Brueggeman, s.c.**

**Writer's Direct Number  
(414) 223-0424**

January 29, 2009

Dear Members of the Senate Committee on Labor, Elections and Urban Affairs:

The following provides a summary of testimony provided by Attorneys Benjamin A. Menzel and Christopher J. Ahrens in support of Senate Bill 2.

**Senate Bill 2 Seeks to Adequately Protect Wisconsin's Workforce**

Before the Senate Committee on Labor, Elections and Urban Affairs is Senate Bill 2 ("SB-2"), which seeks to amend certain provisions of Wisconsin's wage claim and lien law, chapter 109, *Wis. Stats.* The Bill, introduced by Senator John Lehman (D-Racine), provides Wisconsin's employees protection in the event an employer ceases business and fails to pay employees' wages.

First, we must be mindful that what is at issue in SB-2 is employees' *earned wages*. By virtue of chapter 109, *Wis. Stats.*, even coming into play, an employer's employees are likely already without a job. SB-2 seeks to provide those employees with protection for their already hard-earned wages.

Of particular importance is the removal of the \$3,000 cap on "superpriority" claims. Under current law, unpaid wages of no more than \$3,000, earned in the last 6 months, are provided a superpriority over certain other liens or interests, including security interests held by commercial lending or financial institutions. While the banking industry may contend that wage claims rarely exceed \$3,000, we must again bear in mind that we are discussing wages *earned* by employees. As stated in prior cases, "It was the intention of the [wage lien] statute to give [ ] workmen an *absolute lien* ... as against everybody," and that "their claim is a *sacred lien*." *Paine v. Woodworth*, 15 Wis. 298, 332-33 (1862) (emphasis added). Further, "We do not discern how paying workers the wages they have earned 'imperils' the banking and commercial finance industry in any way." *Pfister v. MEDC*, 216 Wis. 2d 243, 269, 576 N.W. 2d 554 (Ct. App. Wis. 1998). While these cases may deal with prior versions of Wisconsin's wage claim and lien law, their points remain the same. The monies contemplated by the wage claim and lien law are those that have already been earned, and, are rightfully due an employer's employees. One must ask: Why should there be a cap on earned wages?

Simple common sense illustrates how a \$3,000 cap is inadequate. For example, in the construction and other skilled workforce industries, employees may typically work in excess of 50 hours per week during busy seasons. These skilled tradespersons may typically earn \$20 per hour or more. In such an example, one week of pay is at minimum \$1,100. By law, employer's are allowed to pay wages up to one month after the wages are earned. Typically, employers pay wages on a weekly or biweekly basis with a week delay. So in many situations, 3 weeks' pay may be at issue. In such circumstances, in the example above, the employee would be due \$3,300 in unpaid wages. Now, take into account that often times this employee may have unpaid vacation or holiday pay deducted from his or her wages, or may have accrued vacation or holiday pay. If the employer fails to pay

1555 North  
RiverCenter Drive,  
Suite 202  
P.O. Box 12993  
Milwaukee, WI 53212  
Fax 414.271.6308  
  
Telephone 414.271.4500  
Toll Free 800.841.5232

deducted vacation or holiday pay for 6 months or if accrued vacation or holiday pay is at issue, this likely will add over \$1,400 to the employee's lost wages. Thus, an employee's total unpaid wages can easily exceed the current law's cap of \$3,000 by substantial amounts.

In addition, certain other Wisconsin statutes must be considered in this discussion, particularly Wisconsin's plant closing law, section 109.07, *Wis. Stat.* Under this statute, employers with 25 or more employees must provide notice of no less than 60 days of the employer's intent to shut down. If the employer fails to do so, the employees are entitled to wages during the time period for which the employer's notice failed. For practical purposes, the employer either provides the notice required by statute, or provides no notice at all. When no notice is provided, the employees are severely affected. For example, assume an employee is earning \$15 per hour and works 40 hours per week. If the employer fails to provide notice, this employee would have over \$5,000 in unpaid wages. Add to this amount any earned or accrued vacation or holiday pay and the \$3,000 cap is far exceeded. Lifting the current law's \$3,000 cap provides Wisconsin's workforce vitally important assurance that their hard earned wages and pay required by statute will not be compromised.

Other changes to the existing law include removing the six-month "look back" period found in section 109.09(2)(c)(2.). This section provides that an employee is only entitled to a superpriority for his or her unpaid wages for the six months prior to his or her filing of a wage claim and lien. Employees often have a certain attachment to their employer and in some circumstances, the employer may make statements and assurances to calm employees and lead them to believe things will get better, even after the employer shuts down. These statements may provide the employees with a deterrent to filing claims. Unfortunately, in reality, these employer "feel good" statements rarely prove true. The result is a delay in filing a wage claim and lien which results in a limitation on the unpaid wages for which the employee is entitled to a superpriority. This issue becomes particularly important when a worker is not represented (non-union).

SB-2 also seeks to add "collective bargaining representative" to the list of those who may file a wage claim and lien. This change is proposed to decrease the delay in employees' filing of wage claims and liens. Any such delay typically results in the employee losing out on at least a portion of the superpriority he or she is entitled to due to the six month "look back" provision discussed above. Without the proposed change, employees must either make a claim themselves or assign their claim to their union. Employees are often unaware of their statutory rights and by the time a claim is filed, substantial delay may occur. Furthermore, the need to obtain assignments from employees can not only cause delay, but may result in some employees being excluded should they fail to assign their claim or file their own. By allowing a collective bargaining representative to file the wage claim and lien, these concerns are eliminated and more workers will receive the protection intended.

Finally, SB-2 adds "bona fide purchaser" to the list of those upon whom the superpriority applies. This was necessitated, and recommended, by the Seventh Circuit's decision in *In re: Globe Building Materials, Inc.*, 463 F.3d 631 (7<sup>th</sup> Cir. 2006), which applied chapter 109 to bankruptcy. In *Globe Building*, the court held that a chapter 109 wage lien is a priming lien, which may provide superpriority to other liens. But, since "bona fide purchaser" is not included in the list of those whom a wage lien is superior to, it is not superior to a bona fide purchaser. The court then went on to hold that a bankruptcy trustee is a bona fide purchaser, regardless of whether an actual bona fide purchaser emerges. In effect, due to *Globe Building*, once a bankruptcy is filed employees lose their wage lien superpriority. In bankruptcy, an employee's right to unpaid wages is vitally important. The

amendment to SB-2 adds language at page 3, lines 4-7, which should adequately protect employees' wage lien in bankruptcy.

As detailed above, SB-2 seeks to provide Wisconsin's employees significant protection to their unpaid wages.

**Examples Where Current Law Inadequately Protected Workforce**

- Partners Floor Covering LLC - Milwaukee, WI

After Partners Floor Covering was placed into bankruptcy, the employees were unable to perfect a wage lien because of the automatic stay in bankruptcy which serves as an injunction against any proceeding of any kind to collect a pre-bankruptcy debt unless a *generally applicable* law provides for a "priming" lien. This is an example of the effect of the *Globe Building* decision where the court held that a chapter 109 wage lien is a priming lien, but since "bona fide purchaser" is not included in the list of those whom a wage lien is superior to, it is not superior to a bona fide purchaser. As a result, the majority of the member's unpaid wage including vacation pay which was deducted from the employee's paychecks was left unpaid.

- Best Ceilings & Studs, Inc. - Pewaukee, WI

The company closed its doors during peak construction season leaving unpaid wages including vacation pay for a two week period. About a quarter of the work force had claims that exceeded the \$3,000.00 cap without taking into account vacation pay. This was primarily due to unpaid overtime.

- Pro-Type Builders - Dalton, WI

This company went non-union, but during the last eight months it was signatory to a collective bargaining agreement, the company failed to pay certain employees their proper wage. By the time union could gather the necessary wage assignments, the six month "superpriority" had begun to expire. Eventually, Pro Type agreed to satisfy the wage claims, but had the company not done so the employees in question would not have been entitled to any priority claim. This example also illustrates the importance of allowing a collective bargaining representative to file wage liens on behalf of union members to perfect a claim within the six-month look back period.

- Peerless Electric, LLC - Brookfield, WI

Peerless Electric went out of business this past summer with significant bank debt whereby it is likely the employees will be unable to receive the benefit of the wage claim and lien law because of the bank's prior security interest. Even so, the majority of the outstanding wage claims exceed the \$3,000 cap as in addition to unpaid base wages, the employer failed to pay the employees' vacation/holiday wage for the seven months prior to closing, and for some employees even longer. To further complicate matters, the union was unable to obtain all of the necessary wage assignments within the six month look back period leaving some members without a priority claim.

- Truc Masonry, Inc. – Cedar Grove, WI

Truc Masonry is a very recent occurrence where some of the unpaid wages to employees will likely exceed the \$3,000.00 cap after taking into account overtime hours. At this point, it appears the employees will be entitled to a superpriority claim, but that claim will likely be compromised due to various caps imposed by the current statute and potential delay caused by the need to obtain assignments from a workforce that is spread across the state.

- Iron Fireman – Milwaukee, Inc. – Milwaukee, WI

The company was placed into receivership and sold to a bona fide purchaser. Prior to being purchased, the company left behind two weeks in unpaid wages, with at least one of the claims exceeding the \$3,000.00 cap. Fortunately for the former employees, the company was sold at a higher price than expected and it now appears that enough proceeds were generated from the sale to satisfy the secured creditor bank as well as all of the unpaid wages. Nonetheless, this is an example where in spite of the superpriority, certain employees may not have received the full amount of their claim because of the \$3,000.00 cap.

- Biehn Construction, Inc. – Kenosha, WI

Biehn Construction is an example of Wisconsin's plant closing law, whereby employers with 25 or more employees must provide notice of no less than 60 days of the employer's intent to shut down. The failure to do so entitles employees to wages during the time period for which the employer's notice failed. Here, the unpaid base wages were satisfied from the proceeds of the bank auction, but not the unpaid vacation hours which in many cases exceeded the \$3,000 cap as the employer failed to pay vacation monies deducted from the employees' paychecks for periods of time ranging between six months and two years.

- Stainless Steel Specialties, Inc. – Oostburg, WI

This is an example of a situation where employees were unable to receive the benefit of the wage claim and lien law because of a bank's prior security interest. Had those employees been able to advance their claims, those claims would have easily been capped at \$3,000, as the employer failed to pay the employees' vacation/holiday pay for 2 years, all while deducting same from the employees' paychecks.

- U.S. Drywall, Inc. – Brillion, WI

The company closed its doors leaving unpaid wages including vacation pay for a two week period. Although it appears the claims in question do not exceed the \$3,000.00 cap, delays caused by obtaining assignments from a workforce spread across the state nearly resulted in certain employees missing out on perfecting a superpriority claim.

The foregoing discussion sets forth why Senate Bill 2 is so important to our state's workforce and the examples above provide proof that the current statute is insufficient to meet our workers' needs. We hope you give Senate Bill 2 your strong consideration.

Very truly yours,

PREVIANT, GOLDBERG, UELMEN,  
GRATZ, MILLER & BRUEGGEMAN, s.c.

BY



BENJAMIN A. MENZEL

[bam@previant.com](mailto:bam@previant.com)

CHRISTOPHER J. AHRENS

[cja@previant.com](mailto:cja@previant.com)

MARIANNE GOLDSTEIN ROBBINS

[mgr@previant.com](mailto:mgr@previant.com)



# Wisconsin State AFL-CIO ...the voice for working families.

David Newby, President • Sara J. Rogers, Exec. Vice President • Phillip L. Neuenfeldt, Secretary-Treasurer

To: Senate Labor, Elections and Urban Affairs Committee

From: Phil Neuenfeldt, Secretary-Treasurer & Legislative Director  
Joanne Ricca, Legislative and Policy Research Staff

Date: January 29, 2009

Re: **Support for Senate Bill 2**  
**Employee Wage Protection Act**

Wisconsin has a long and proud history of protecting the right of workers to receive all wages earned. This has been true ever since 1862 when the Wisconsin Supreme Court sided with loggers left unpaid by a logging company:

“It was the intention of the [wage lien] statute to give such workmen an absolute lien...as against everybody” and that “their claim is a sacred lien.” *Paine v. Woodworth, 15 Wis. 298, 332-33 (1862)*

Whether through court decisions or statute, our state took the enlightened position that workers’ wage claims were paramount to the claims of others. It is only in the last decade that the protection for workers’ wages has been subverted. During action on a budget adjustment bill in the final weeks of the 1997-98 session, banking lobbyists gutted the wage claim law through a late-night miscellaneous motion in the Joint Finance Committee. That action essentially put banks first. Though a few changes have been made since then, we are still trying to undo the injustice done to workers by that action a decade ago.

Senate Bill 2 will restore the long-standing tradition of putting workers first. It will place workers ahead of banks and other creditors for all wages earned and owed in the event of a business closing or bankruptcy or employer violation of a labor standard. It will remove the \$3,000 cap that workers can currently recover on superpriority status, and it will clarify that Wisconsin’s wage claim lien law does apply in bankruptcy cases.

The banks have seized on the current financial climate to issue dire warnings about this legislation—that it will cause banks to extend less credit to Wisconsin businesses due to uncertain risk exposure.

The following points are for your consideration:

- **Most businesses pay their employees.** Of the thousands of businesses that close each year in Wisconsin (13,100 in 2006)\*, almost all are responsible and pay their employees the wages owed. However, in the infrequent case when workers are left unpaid, the resulting economic hardship on them and their families can be huge. The banks are exaggerating the



implications of this legislation for the conduct of their business and the potential number of wage claims.

- **Determining the right priority.** Given the fact that priorities must be set for the distribution of remaining business assets, who can best afford to take a financial loss: banks with billions in assets that are in the business of making loans, or workers and their families who rely on every single paycheck and are lucky to add a few dollars to their savings accounts? The answer is obvious. It was reaffirmed by the 1<sup>st</sup> Circuit Court of Appeals in a decision rendered just before the banks came to the Legislature to gut the wage claim law in 1998:

“The absolute or sacred nature of the wage claim lien flows from the simple proposition: if workers are not paid their wages, they and their families will suffer....Nothing in the statute suggests that the Legislature intended workers to lose their wages merely because a bank or some other creditor arrived at the courthouse first.” (*Pfister v. MEDC* 216 Wis.2d 243, 269, 576 N.W. 2d 554, 1<sup>st</sup> Circuit Court of Appeals, 1998)

- **Bankers deal in financial risk for a living.** Banks are in the business of risk and are structured to handle it. The 1<sup>st</sup> Circuit Court of Appeals rejected the argument by the banks that a priority for workers' wages would limit the banks' ability to make loans. The justices responded:

“We do not discern how paying workers the wages they have earned ‘imperils’ the banking and commercial finance industry in any way.”

However, the banks had the opportunity at the time to gut the law legislatively without debate, and they took it. They have used the same argument that was rejected by the court to fight every legislative attempt to restore full worker priority over the last decade.

Banks expect that some loans will go bad and that is why they handle risk exposure through adequate loan-loss reserves. They can also apply stricter credit standards and require more thorough reporting from businesses that are granted loans.

- **Banks are presenting a false choice.** In order to reduce their risk exposure, the banks seem to be saying that they might need to rely on the wages that are owed to employees in order to secure repayment of their business loans. Again, from the 1<sup>st</sup> Circuit Court of Appeals decision:

“After all, a lien for wages is a lien for money that should have been paid in the first instance—money that, in the ordinary course of business, would not have been available to pay any claims of a secured party.”

- **Banks are benefiting from taxpayer bailouts.** Our nation's banks, including some in Wisconsin, are receiving billions in aid from the nation's taxpayers. It is an insult for the banks to maintain (as they have in a recent Wisconsin Bankers Association press release) that wage protection for Wisconsin workers is the biggest threat to the state's banking industry and economy. As taxpayers, Wisconsin workers have already contributed to a massive bailout fund for the financial sector in order to cover irresponsible loan and investment decisions and excessive CEO compensation. Wisconsin workers should not have to contribute their wages as well.

This is an issue of fundamental fairness. The failure of an employer to pay employees their wages earned for work performed in good faith is a form of pay theft. That is how the Wisconsin Supreme Court saw it 146 years ago and it is just as true today.

Wisconsin workers are simply asking for the Legislature to restore their rights. We urge your support for Senate Bill 2.

- *Small Business Profile: Wisconsin*, SBA Office of Advocacy, 2007

# **Chicago Title Insurance Company**

---

20900 Swenson Drive  
Suite 900  
P.O. Box 987  
Waukesha, WI 53187-0987  
(262) 796 - 3800

Direct Line: (262) 796 - 9655  
Fax Number: (262) 796-3801

**TO:** Members of the Senate Committee on Labor, Elections and Urban Affairs

**FROM:** Lisa Petersen, for Chicago Title Insurance Company

**DATE:** January 29, 2009

**RE:** Unless Senate Bill 2 is amended, very few workers will collect moneys due from failed businesses

Since 2003, members of the Wisconsin Land Title Association have sought an amendment to Wisconsin's wage claim lien law to cure a defect in the notice provision in the law. WLTA members have testified at every hearing held on the law during the last three legislative sessions. The defect in the law is well known to lawyers at the Department of Workforce Development and in the Justice Department.

Here is the law in question:

Wis. Stats. s. 109.09 (2) (a) provides that "The department of workforce development ... shall have a lien upon all property of the employer, real or personal, located in this state for the full amount of any wage claim or wage deficiency."

Wis. Stats. s. 109.09 (2) (b) 1. provides that "A lien under par. (a) upon real property takes effect when the department of workforce development or employee files a notice of the lien with the clerk of the circuit court of the county in which the services or some part of the services were performed...

Let me give you an example which illustrates the defect in the law. Under the law, when a business fails in Jefferson County and workers are not paid, the law provides for the wage claim lien to be filed in the Office of the Clerk of Courts in Jefferson. Under the law, the wage claim lien is effective in all 72 counties in the state even though it is filed only in Jefferson County. If the business which failed also owns real property in Douglas County, the wage claim lien is effective even though the lien cannot be found in the Clerk of Courts Office in Superior, where the Douglas County Courthouse is located.

The primary manner in which liens against real property are satisfied is when the property is sold. Prior to closing, a title insurance commitment is obtained, which lists all of the liens and other encumbrances on the property. At closing, sufficient funds are withheld from the seller to satisfy all of the claims against the property so that clear title is delivered to the buyer.

Title insurers are happy to provide this service, but cannot be required to conduct a 72-county records search in order to discover wage claim liens filed outside the county where the property being transferred is located. Conducting such a search would greatly increase the cost of title insurance and would unnecessarily delay the closing.

Several years ago the Department of Workforce Development sought to use title insurers to act as collection agents for unpaid child support, a laudable goal. To that end, a statewide electronic filing system was created, which title insurers search prior to every real estate closing. Once a child

# **Chicago Title Insurance Company**

---

support lien is filed, it can be easily searched by title insurance agents in all 72 counties. The result has been the collection of tens of millions of dollars in unpaid child support.

Members of the WLTA have asked that this system be expanded to also cover wage claim liens. To date, this change has not been made.

And so today we are at a crossroads. Under current law, a wage claim lien cannot exceed \$3,000 per worker. Senate Bill 2 would remove the \$3,000 cap. This will greatly increase the risk that title insurers will face for not finding out-of-county wage claim liens. If Senate Bill 2 is enacted without providing a statewide wage claim lien notification system, it is likely that title insurers will refuse to insure against wage claim liens. The result of such a change in title insurance policies would be that wage claim liens will not be satisfied when the real property owned by the failed business is sold.



William R. Bertha  
President  
Wisconsin Market

777 East Wisconsin Avenue  
Milwaukee, WI 53202  
414 765-4282  
414 765-6180 fax  
william.bertha@usbank.com

January 28, 2009

The Honorable John Lehman  
Room 310 South  
State Capitol  
P.O. Box 7882  
Madison, Wisconsin 53707

The Honorable Phil Garthwaite  
Room 304 West  
State Capitol  
P.O. Box 8952  
Madison, Wisconsin 53708

Dear Senator Lehman and Representative Garthwaite:

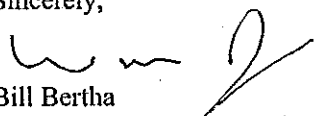
With over 4,800 employees throughout Wisconsin, I'm writing to express U.S. Bank's opposition to SB2 and its Assembly companion, LRB 1413/1, legislation eliminating Wisconsin's wage lien cap. If enacted, this legislation would further strain an already turbulent credit market.

SB 2 would strip all businesses in Wisconsin of collateral needed to secure credit. Currently, banks and lenders multiply the number of employees a business has by \$3,000 (the current wage lien cap), and subtract this amount from the business' lending pool to determine its collateral. By removing the \$3,000 cap, already the highest in the nation, banks and lenders will be unable to calculate risk. Consequently, they will have to assume that all of a business' collateral will be absorbed by their employees' super priority lien. This will prohibit new lines of credit to businesses and disallow continued use on existing lines, effectively shutting down cash flow for businesses all over the state.

While U.S. Bank believes employees should receive wages for work performed, an unfettered law providing no limits could be disastrous to the local economy. Wisconsin already boasts the most progressive wage lien law in the country. The first \$3,000 of wages, in addition to vacation and severance pay, are required to be paid to employees before creditors. Based on numbers from Wisconsin's Department of Workforce Development, this is more than sufficient to protect average employees' paychecks should a company fail or layoff employees.

In order to protect Wisconsin's businesses and their thousands of employees, U.S. Bank strongly requests that you oppose SB 2 and its Assembly companion, LRB 1413/1. Thank you for your consideration of our position. Should you have any questions, please don't hesitate to contact our Associate General Counsel, Nolan Zadra, at 720-566-7711, or me at the number listed below.

Sincerely,



Bill Bertha  
President, Wisconsin Market

Cc: Senator Spencer Coggs, Chairman  
Senator Bob Wirth  
Senator Alan Lasee  
Senator Glenn Grothman



**Public Hearing of the  
Senate Labor, Elections and Urban Affairs Committee**

**SB 2 – Wage Claims**

**January 28, 2009**

**Testimony of Daryll Lund, President & CEO  
Community Bankers of Wisconsin**

Senator Coggs and Members of the Committee, my name is Daryll Lund, President & CEO of the Community Bankers of Wisconsin (CBW). CBW is a statewide trade association representing the interests of approximately 210 community banks doing business in 900 offices across Wisconsin.

I appear before you today in opposition to SB-2.

If passed, SB-2 will be one of the most generous and far-reaching wage claim lien laws in the nation. A proper balance must be struck between the rights of workers who are owed wages on the one hand, and the necessity that banks be able to accurately underwrite credit risk on the other.

SB-2 tips the scales, giving employees unlimited unpaid wage rights over secured lenders, and frustrating the delicate balance upon which responsible and affordable lending depends. The constriction of our credit market caused by SB-2 will give companies an incentive to take their business outside of Wisconsin, and Wisconsin needs to do everything it can to attract employers in the current economic environment.

The current struggle in the Legislature and courts over the priority of wage claim liens goes back several years. In 1996 the State Legislature rewrote Wisconsin's Wage Payment and Collection law and reclassified it as Chapter 109 of state statutes. This new law authorized the Department of Workforce Development (DWD) to obtain a lien on the property of a Wisconsin business.

---

Soon after passage of the new lien provision a dispute arose as to the lien's actual priority. Chapter 109 conflicted with the state statute at that time which stated that the financial institution liens should be given first priority except for environmental clean-up liens. In the early 1980's the Waukesha County District Attorney, acting on behalf of DWD utilized the wage claim lien law in a case involving Falls Foundry that had burned to the ground leaving it unable to pay the workers' final wages. With the proceeds of an insurance settlement in question the Waukesha County circuit court ruled that the bank's lien took priority over DWD's wage claim lien.

Numerous other wage claim lien changes have occurred in the Wisconsin Legislature in 1993, 1998, 1999-2000, 2001 and finally in 2003.

After all of these changes is the introduction of SB-2 really necessary? In 2003, Governor Doyle signed into law Act 63, which amended the Wisconsin wage claim lien statute and established the current \$3,000 wage lien that takes precedence over a lien of a commercial lending institution.

Back in 2003, the Wisconsin Department of Commerce at the direction of Governor Doyle's office brought together lenders, labor and other interested parties to reach a solution to this never ending wage lien battle. What resulted from those meetings was an agreement reached by a good

faith effort and compromise by all parties. The banking industry was not completely happy with the outcome, as I am sure labor was not as well.

Based upon recent data provided by the Department of Workforce Development we believe the current \$3,000 wage lien cap is sufficient to meet the needs of unpaid wages. (Chart). From 2003, when the \$3,000 wage claim lien cap went into effect, DWD has settled 24 cases involving 2,770 employees and collected over \$8.2 million dollars. Or on average just under \$3,000 per employee.

In conclusion, CBW believes the current wage lien statute is sufficient and balances the needs of lenders while protecting workers.

Thank you.



## Summary of Wisconsin Major Labor Standards Cases

Source: Wisconsin Department of Workforce Development, (DWD) (As of 1/27/09)

Note: Summary of cases that DWD has closed, settled or deemed uncollectible for business closing and mass lay-off notification cases, healthcare cessation notification cases and large unpaid wage claims.

Wage Lien changed to \$3,000 per employee effective 12/1/2003

Calendar Year	# Cases	# Affected Employees	Dollars Collected
2003 [4/1-12/31]	3	734	\$ 2,800,000
2004	5	569	\$ 2,490,000
2005	4	449	\$ 1,944,174
2006	7	750	\$ 761,259
2007	3	168	\$ 302,456
2008	2	100	N/A
<b>TOTALS</b>	<b>24</b>	<b>2,770</b>	<b>\$ 8,297,889</b>
<b>AVG Dollars Collected Per Employee</b>			<b>\$ 2,995.63</b>

(Note: From 2003-2008, 9 cases remain open involving 822 employees)



Testimony of the Wisconsin Bankers Association  
before the  
Senate Committee on Labor, Elections and Urban Affairs

10:00 a.m., January 29, 2009

Thank you, Chairman Coggs, and Committee Members. My name is Rose Oswald Poels and I am senior vice president and counsel with the Wisconsin Bankers Association (WBA). WBA was founded in 1893 and represents 300 bank and thrift institutions and their 30,000 employees. The Wisconsin Bankers Association (WBA) appreciates the opportunity to testify today in opposition to SB 2. WBA represents the smallest bank in Wisconsin, the largest bank in the state, and just about every bank in between.

Appearing with me is Russ Weyers, president of Johnson Bank in Racine. Mr. Weyers is the current chairman of the Wisconsin Bankers Association.

We both appear today in opposition to SB 2.

If enacted, SB 2 would remove the current \$3,000 cap on the state's wage claim lien law. SB 2 also proposes to make some other radical changes to the current statute – all of which WBA believes will greatly impair the creditworthiness of Wisconsin businesses inevitably leading to more loan denials, business failures and ultimately, job losses.

In our testimony, we will discuss the history of the wage lien law in Wisconsin; the 2003 compromise that led to the current law; how that compromise protects and balances the vital interests of workers, lenders and businesses; how an uncapped wage lien law will essentially strip a business of much of the collateral it needs to pledge against a line of credit or other loan; and what that will mean to business growth and job stability in Wisconsin during the worst economic crisis since the Great Depression.

Before I begin on the substance of SB 2, I would like to provide a brief history of the wage lien law in Wisconsin. Our statute was created in 1975 when the administering state agency (then DILHR) was given an enforceable lien right over an employer's property. Because the lien was enforceable but not automatic, no conflict with competing liens ever arose.

In 1993, the law was expanded so as to give individual employees the option of enforcing this lien right. That resulted in greater activity under the statute and suits were quickly initiated on such issues as to whether this lien legally superseded liens that had existed for decades and whether this change had retroactive effect or not. In January 1998, the District I court of Appeals, overruling the trial court's decision in part, ruled that this wage claim lien did supersede other liens and also was retroactive in effect. In fact, prior to this decision, most lawyers believed it was unconstitutional for the state to assert lien priority over preexisting security interests.

4721 SOUTH BILTMORE LANE  
MADISON, WI 53718

P. O. BOX 8880  
MADISON, WI 53708-8880

608-441-1200  
FAX 608-661-9381

[www.wisbank.com](http://www.wisbank.com)

In reaction, the legislature in 1998 amended this statute to provide that wage claim liens are superior to all subsequently filed liens (except DNR pollution clean-up liens) but do not take precedence over previously filed liens. That lasted for only one year when, in the 1999 budget act, the legislature changed the law again. This change provided that the wage claim lien is superior to all liens, whenever filed, except for financial institution liens that originate before the wage claim lien takes effect and except for DNR hazardous substance or other pollution clean-up liens.

In 2003, the Wisconsin Department of Commerce (WDOC), led by then Secretary Cory Nettles, brokered a compromise between the banks' and unions' interests. The compromise, which is current law, gave Wisconsin workers the most generous wage claim lien law in the nation. More specifically, current law provides workers with a super priority over all other creditors, including banks (wage lien is still subordinate to a DNR pollution clean-up lien), for up to \$3,000 per employee for hours worked, vacation and severance pay, among other benefits set forth in the definition of "wages" in sec. 109.01 (3). Workers still have a lien for all monies owed them beyond the initial \$3,000; however, that lien does not have a super priority status over previously secured and perfected creditors.

Based on what the average worker makes in a two-week payroll period, the \$3,000 cap is more than sufficient to protect employees' paychecks if a business fails unexpectedly.

The 2003 compromise struck an important balance between the need to ensure that workers' final paychecks are protected when a business fails, while allowing lenders to calculate their risk exposure and secure collateral.

There are several negative outcomes that will result if SB 2 is enacted as currently proposed. First, SB 2 would remove the current \$3,000 super priority cap in the state's wage claim lien law along with the limitation that the unpaid wages must be earned by an employee within the 6 months preceding the date on which the employee files the wage claim lien. The elimination of these two provisions removes any ability of a creditor to quantify their risk when deciding whether to make, extend, or renew a loan, or whether to allow continued access on an existing line of credit.

SB 2 further endangers existing lines of credit in the provision stating that this unlimited super priority exists for any lien that exists on the day before the effective date of this law as against any lien of a commercial lending institution that originated before the lien under this law took effect. Unlike the negotiations in 2003, there is no apparent recognition or concern for existing lines of credit to businesses.

The compounded effect of these above-described changes is significant and potentially catastrophic for businesses today. The reality is that prudent financial institutions have routinely considered the wage lien law as it has existed since 2003 in their underwriting of any business credit. The effects of that analysis may have been minimal in the past given better economic conditions, better cash flow by the business borrower, and other factors; however, the consideration was still there in a creditor's underwriting of the business borrower.

Given today's challenging economic times that are not only restricting cash flow by businesses, but also are resulting in greater, prudent scrutiny by state and federal banking regulators on bank's commercial loan portfolios, policies and underwriting standards, it will be mandated that this wage lien law be a factor in considering the creditworthiness of a business borrower.

The result of SB 2 is that creditors will be forced to deny business loan requests, restrict or stop altogether continued access to much needed lines of credit by businesses, or call existing loans due because the creditworthiness of the business borrower has now been greatly impaired as a result of this law. There simply is no escaping this reality. This will lead to loss of jobs and perhaps complete business failures.

Current law provides an important balance to preserve the much-needed continued access to credit by businesses against the important rights of workers to be paid. This prudent balance has always been important to preserve but is even more important to protect in today's economic environment. Unfortunately we are living through the worst economy since the Great Depression and we must do what we can to make sure businesses can continue to exist so that jobs even exist in the first place.

I'd now like to turn WBA's testimony over to Russ to explain the impact of SB 2 on practical banking operations.

Thank you very much for your careful consideration to this very critical issue. WBA respectfully urges you to oppose SB 2.



# WMC

WISCONSIN'S BUSINESS VOICE

TO: Members of the Senate Committee on Labor, Elections and Urban Affairs

FROM: James Buchen, Vice President, Government Relations

---

DATE: January 29, 2009

RE: Senate Bill 2 – Unlimited Wage Lien Liability

### **Background**

This bill eliminates that \$3,000 cap and six-month time limit so that under the bill a wage claim lien covering any amount of wages earned at any time takes precedence over a lien of a commercial lending institution, regardless of whether the lien of the commercial lending institution originated before or after the wage claim lien takes effect.

The bill also provides that a wage claim lien takes precedence over the rights of any purchaser of any property of the employer, including any bona fide purchaser that purchases the property of the employer at the time of commencement of a bankruptcy proceeding, that is, the trustee in bankruptcy. This change reverses *In Re Globe Building Materials, Inc.*, 463 F. 3d 631 (7th Cir. 2006), which held that the trustee in bankruptcy could avoid a wage claim lien because under the current wage claim lien law a wage claim does not expressly take precedence over the rights of a bona fide purchaser under the federal bankruptcy law.

Finally, the bill permits a recognized or certified collective bargaining representative of an employee to file a wage claim with DWD, or to bring a wage claim action in court, on behalf of an employee and grants a wage claim lien to a collective bargaining representative that brings a wage claim action.

### **WMC Position**

Most states recognize the need for financially stressed business entities to be able to access capital from willing lenders. Protecting the lien right priority of lenders, in part, provides greater certainty that the loan will be repaid, at least in part.

Removing any lien priority of a lending institution will cut off access to capital for the most financially stressed business at the time they are most in need of access to capital, resulting in a greater loss of employment in more situations, a phenomena that we continue to see in our economy today. The current statute reflects a good faith attempt to balance the interests of lenders, businesses and their employees in keeping financially distressed businesses in operation.

### **Conclusion**

For these reasons, WMC urges the Committee to vote against this legislation.

## **Testimony Regarding Senate Bill 2**

**before the**

**Wisconsin Senate Committee on Labor, Elections and Urban Affairs**

**by Robert Granum, President, UE Local 1111**

---

**January 29, 2009**

I am here today on behalf of thousands of UE members and retirees across Wisconsin to urge for the passage of Senate Bill 2 to help ensure that workers are paid the wages that they have earned.

Members of my union have recently been badly hurt by the current law regarding priority of financial institutions over workers in a wage lien situation. About 80 workers at Wisconsin Die Casting in Milwaukee, members of UE Local 1112, were told just before quitting time on March 5, 2008 that the factory was closing down immediately and they were all out of work. The bank that provided financing to the company had cut off the line of credit and was refusing to honor any more checks. Wisconsin Die Casting was out of business. The workers did not receive pay for their last two weeks of work, nor for their vacation that they had already earned, nor for the 60 days of pay due to them under the federal and state WARN Acts.

The workers filed their wage claims with the Department of Workforce Development and began their long wait. The DWD recently completed the calculations of how much each worker is owed and the amounts typically range between \$9,000 and \$12,000. However, due to the current law, each of the workers will be limited to collecting only \$3,000. Workers will receive between 25 cents and 33 cents on the dollar, despite the fact that the financial institutions that were involved have collected large sums of money by collecting the accounts receivable, selling off the inventory, and auctioning the machinery, with the building to be sold off soon.

These workers earned those wages and need the money. Due to the current recession, many of them remain out of work or are earning far less than they were before. It is just plain wrong that these workers are being told that they are owed thousands that they will not receive because the financial institutions are a higher priority than they are. We can not keep this economy going if workers don't have money to buy the goods and services that our country produces. Refusing to pay workers for wages they have earned does not make economic sense.

It is also in the interest of the business community that there is a system in place to guarantee that workers receive the money they earned. The whole country watched the situation at Republic Windows and Doors in Chicago when the workers occupied the plant and began a huge pressure campaign against Bank of America because they were told they would not be receiving the money they were due. If the legislature does not pass Senate Bill 2, we are likely to have similar levels of conflict here in Wisconsin as workers react to being thrown out of work without the money they have earned.

Please approve Senate Bill 2. It is the right economic policy, the right social policy, and the right thing to do for the State of Wisconsin.

Thank you.